

HENRY MILLER.

DECEMBER 15, 1857.—Committed to a Committee of the Whole House, made the order of the day for to-morrow, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

HENRY MILLER *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Claimant's brief.
3. United States Solicitor's brief.
4. Opinion of the Court, adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Washington, this seventh day of December, A. D. 1857.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

HENRY MILLER, }
vs. } Claim—petition.
THE UNITED STATES, }

To the honorable Judges of the Court of Claims of the United States at Washington, D. C., in the District of Columbia:

Your petitioner, Henry Miller, of the county of Rockcastle, in the State of Kentucky, in his humble capacity, would respectfully represent to this honorable court:

That he entered in the service of the United States from the county of Bledsoe, in the State of Tennessee, in the year 1812 or 1813, in the fall of the year, for the term of eighteen months, under Captain Anderson, was then transferred to Captain Armstrong, then to Captain

Butler, then to Captain Aplin, then to Captain Hamilton, rifle, in the United States regiment of infantry, commanded by Colonel Gaines, in the war declared by the United States against Great Britain, on the 18th day of June, 1812, which time I served out faithfully; and in the month of February, 1814, while I was engaged strictly in the line of my duty as a soldier in the military service of the United States, building breast works at Lower Sandusky, my foot and ankle was mashed by the fall of a log, from which it inflamed and grew worse until the month of August, 1827, when my leg was amputated from my body in consequence of said wound. And in the year 1851 or 1852, I filed my petition from the county of Rockcastle, in the State of Kentucky, to the Pension Office at Washington, D. C., for the benefit of the pension act of Congress, approved 16th of April, 1816, or the pension laws of the United States made and provided for in such cases, upon which a pension was awarded to me under the law of the United States of \$8 per month, commencing on the 14th day of April, in the year 1852, the day on which the last proof in the case was completed, and after said pension was awarded to me, I am advised an appeal was taken, by my attorney, to the honorable Secretary of the Interior, and claimed that justice demanded, and the laws of Congress gave to me an increased pension, at \$8 per month, to commence the month of August, 1817, the time when the amputation took place, and the opinion of the honorable Commissioner of Pensions was confirmed by the then Secretary of the Interior, and said my only redress was to Congress. And afterwards a petition, with 250 subscribers of the names of the best citizens of my county in the State of Kentucky, was presented to Congress for my benefit, asking that honorable body to pass a law for my benefit, for the back pay claimed, at \$8 per month, to take date at the time when the amputation was made. Also a separate petition for increase of pension was presented to Congress, both of which I am informed was referred to a Committee on Invalid Pensions, and was by that committee rejected; and now files this petition before this honorable Court for redress. And to sustain my claim to the increase of pension, at \$96 per annum, claim, as aforesaid, under the act of Congress of 16th April, 1816.

This honorable Court of Claims is respectfully referred to the aforesaid act of 16th April, 1816, &c., and to all the papers on file in the Pension Office at Washington, D. C., or is on file in any department or office of government, upon which I was granted a pension, and to both petitions in Congress, as aforesaid, to show the justness of my claim, is respectfully submitted.

HENRY MILLER.

STATE OF KENTUCKY, }
 County of Rockcastle. }

I, J. E. Carson, the presiding judge of the county court, in and for said county, do hereby certify that Henry Miller personally appeared before me on the 27th day of November, in the year 1855, and made oath to his foregoing petition according to law; that the contents

thereof was true, and signed the same in my presence with his own hand, and I have no interest in this claim or concerned in its prosecution.

J. E. CARSON, *Judge.*

STATE OF KENTUCKY, }
County of Rockcastle. }

I, E. T. Fish, clerk of the county court, in and for said county, do hereby certify that John E. Carson, judge, before whom the foregoing affidavit and petition was sworn to, was at its date the presiding judge of the county court, in and for said county, duly commissioned and sworn according to law, and his signature thereto is genuine.

In testimony whereof, I have hereunto signed my name and affixed
[L. S.] the seal of said county court, on the 28th day of November,
1855.

E. T. FISH, *Clerk, C. C.*

HENRY MILLER }
vs. } Claim—Petition.
THE UNITED STATES. }

*To the honorable the Judges of the Court of Claims of the United States,
at Washington, D. C., in the District of Columbia:*

Your petitioner, Henry Miller, of the county of Rockcastle, in the State of Kentucky, in his humble capacity, would respectfully represent to this honorable Court: That he entered in the service of the United States from the county of Bledsoe, in the State of Tennessee, in the year 1812 or 1813, in the fall of the year, for the term of eighteen months, under Captain Anderson, was then transferred to Captain Armstrong, then to Captain Butler, then to Captain Aplin, then to Captain Hamilton, rifle, in the United States regiment of infantry, commanded by Colonel Gaines, in the war declared by the United States against Great Britain on the 18th day of June, 1812, which time I served out faithfully; and in the month of February, 1814, while I was engaged strictly in the line of my duty as a soldier in the military service of the United States, building breastworks at Lower Sandusky, my foot and ankle was mashed by the fall of a log, from which it inflamed and grew worse until the month of August, 1817, when my leg was amputated from my body in consequence of said wound. And in the year 1851 or 1852 I filed my petition from the county of Rockcastle, in the State of Kentucky, to the Pension Office at Washington, D. C., for the benefit of the pension act of Congress approved 16th of April, 1816, or the pension laws of the United States made and provided for in such cases, upon which a pension was awarded to me under the law of the United States of \$8 per month, commencing on the 14th day of April, in the year 1852, the day on which the last proof in the case were completed; and after said pension was awarded to me I am advised an appeal was taken by my attorney to the honorable Secretary of the Interior, and claimed that

justice demanded, and the laws of Congress gave to me, an increase of pension, at \$8 per month, to commence the month of August, 1817, the time when the amputation took place, and the opinion of the honorable Commissioner of Pensions was confirmed by the then Secretary of the Interior, and said my only redress was to Congress. And afterwards a petition with two hundred and fifty subscribers of the names of the best citizens of my county in the State of Kentucky, was presented to Congress for my benefit, asking that honorable body to pass a law for my benefit for the back pay claimed at \$8 per month, to take date at the time when the amputation was made; also, a separate petition for increase of pension was presented to Congress, both of which, I am informed, was referred to a Committee on Invalid Pensions, and was by that committee rejected, and now files this petition before this honorable Court for redress, and to sustain my claim to the increase of pension at \$96 per annum, claim as aforesaid, under the act of Congress of 16th April, 1816.

This honorable Court of Claims is respectfully referred to the aforesaid act of 16th April, 1816, &c., and to all the papers on file in the Pension Office at Washington, D. C., or is on file in any department or office of government, upon which I was granted a pension, and to both petitions in Congress, as aforesaid, to show the justness of my claim, is respectfully submitted.

HENRY MILLER.

STATE OF KENTUCKY, }
County of Rockcastle. } ss.

I, J. E. Carson, the presiding judge of the county court in and for said county, do hereby certify that Henry Miller personally appeared before me on the 27th day of November, in the year 1855, and made oath to his foregoing petition according to law, that the contents thereof was true, and signed the same in my presence with his own hand, and I have no interest in this claim or concerned in its prosecution.

J. E. CARSON, *Judge.*

STATE OF KENTUCKY, }
County of Rockcastle, } ss.

I, E. T. Fish, clerk of the county court in and for said county, do hereby certify that John E. Carson, judge, before whom the foregoing affidavit and petition was sworn to, was, at its date, the presiding judge of the county court in and for said county, duly commissioned and sworn according to law, and his signature thereto is genuine.

In testimony whereof, I have hereunto signed my name and
[L. S.] affixed the seal of said county court, on the 28th day of
November, 1855.

E. T. FISH, *County Clerk.*

IN THE COURT OF CLAIMS —No. 458.

HENRY MILLER *vs.* THE UNITED STATES.*Brief of United States Solicitor.*

The petitioner alleges, that he is an invalid pensioner under the act of April 16, 1816, and that the pension which he receives was made to commence April 14, 1852, the date when his proof of disability was completed; whereas he claims, that on completing his proof, he became entitled to arrears from August, 1817, the date when the disability he now labors under was incurred.

He refers in general terms to "all the pension laws," but sets forth no facts which would bring his case within any other act than the one specifically cited as being that under which he was pensioned; and that only need, therefore, be considered in this argument.

I. *The act cited contains no promise that the pension shall commence from the date of the disability.*

In the first section of the act of April 16, 1816, (3 Stat. 285,) is found a proviso directing that the officers and soldiers of the militia, embraced by that section, who have been disabled by wounds and otherwise, &c., &c., "shall be placed on the list of pensioners, in the same manner as the officers and soldiers of the regular army, under such forms of evidence as the President of the United States may prescribe."

This court has held in the case of *Jane Smith vs. The United States*, that the words, "in the same manner," applied to pensions, determine the commencement of the pension. We have then only to inquire when the pension of this claimant would have commenced, had he been a soldier of the regular army, and completed his proof of disability on the 14th of April, 1852.

When the act of April 16, 1816, was passed, soldiers in the army were pensioned under the 14th section of the act of March 16, 1802, (2 Stat. 132,) providing that disabled soldiers "be placed on the list of invalids of the United States, at such rate of pay and under such regulations as may be directed by the President of the United States for the time being." This section merely repeated the provision which had been made in all previous acts for raising troops, and was itself re-enacted by the 7th section of the act of March 3, 1815, (3 Stat. 224.) It is still in force.

In an opinion given under date of May 31, 1832, Attorney General Taney held, that under the power given by this section, the President might make such regulations as would exclude an invalid from the pension list, and thereby prevent him from receiving any pension whatever: *à fortiori*, he might make such regulations as would prevent him from receiving any pension prior to a given date.

The act of 1816, in connexion with that of 1802, gave the claimant a right to a benefit, to be ascertained by regulations prescribed by the

President, which were to show the rate of the periodical payments, and the time when such payments should commence. It is then for the claimant to set forth the regulations which entitle him to the sum he claims. I am not informed of any regulation which would entitle him to an earlier commencement of the pension than that fixed by the department. On the contrary, the earliest known regulation on the subject, that of December, 1822, printed in Mayo and Moulton's book, p. 475, shows that the existing practice then was to grant pensions only from the date of completing proof. As early as the 21st of February, 1795, Congress, by act of that date, (1 Stat. 418,) limited the commencement of revolutionary invalid pensions to the time of completing the proof. And, although the commencement of other military pensions was left to be determined by the President, there is no reason to believe a different rule was intended to be applied to them. Revolutionary soldiers, equally with those of subsequent establishments, had been promised pensions for disabilities; and, if it be a breach of contract to defer the commencement of the pension beyond the date of the wound, then the act of February 21, 1795, violates the contract made by the resolution of August 26, 1776.

But in fact there is not in the act of 1816 any promise of payment to commence on the occurrence of disability. The promise is, that the disabled soldier "shall be placed on the list of pensioners." Pensioners are persons entitled to receive periodical payments for their daily support. Under the system long established in other countries for their army and navy, and early adopted in our own for our navy, (act of March 2, 1799,) and more recently for our army, (act of March 3, 1851,) invalids are entitled, upon application, and proving their claims, to be received into hospitals or asylums, where they are furnished with clothing, food, pocket-money, &c. But it has never been supposed that an invalid, upon being so received, is entitled to compensation for the food or clothing, or pocket-money, which he might have drawn had he applied at an earlier date; and with no more reason can the arrears in this case be contended for.

II. *An earlier commencement than that already granted is forbidden by law.*

The foregoing remarks apply to the ground suggested in argument, that the claimant had a vested right to a pension on the occurrence of the disability; and that *payment only* was deferred until the disability was shown to the department, and application was made for the pension. But before such proof was made, and while the claimant had not yet complied with the regulations on which his right to payment depended, Congress passed the act of May 15, 1820, (3 Stat., 596,) the 2d section of which declares "that the right any person now has, or may hereafter acquire, to receive a pension in virtue of any law of the United States, be considered to commence at the time of completing his testimony, pursuant to the act hereby revived and continued in force." The act revived was that of April 10, 1806, making provision for revolutionary invalids. Up to the 15th of May, 1820, the *provisions of law* limiting the commencement of pensions to

the time of completing the proof, applied only to revolutionary invalids; the power to limit it in other cases was confided to the President, as above mentioned. By the act of May 16, 1820, the same limit was by law imposed upon all invalid pensions.

JNO. D. McPHERSON,
Deputy Solicitor.

HENRY MILLER *vs.* THE UNITED STATES.

Chief Justice GILCHRIST delivered the opinion of the Court.

The petitioner alleges that in the fall of the year 1812-'13, he enlisted, for the term of 18 months, "under Captain Anderson; was then transferred to Captain Armstrong, then to Captain Butler, then to Captain Aplin, then to Captain Hamilton, rifle, in the United States regiment of infantry, commanded by Colonel Gaines," in the war against Great Britain; that in the month of February, 1814, while he was engaged strictly in the line of his duty as a soldier in the military service of the United States, building breastworks at Lower Sandusky, his foot and ankle were injured by the fall of a log, and that in the month of August, 1817, in consequence of this wound, his leg was amputated; that in the year 1851 or 1852, he applied to the Pension Office for the benefit of the pension act approved April 16, 1816, or the pension laws of the United States, and a pension of \$8 per month was awarded to him, commencing on the 14th day of April, 1852, the day on which the last proof in the case was completed. From this decision he appealed to the Secretary of the Interior, claiming that his pension should commence in the month of August, 1817, the time when the amputation took place; but the opinion of the Commissioner was sustained by the Secretary.

The claim of the petitioner is very imperfectly stated, because if his pension does not commence at the time of the completion of his proof, it should commence in the month of February, 1814, the time when the disability was incurred, and not from the month of August, 1817, the time when his leg was amputated.

It does not very distinctly appear whether the claimant was a soldier in the militia or in the regular army, although we infer that at the time of his wound he was a soldier in Colonel Gaines' regiment. It is not, however, very material, as, in either case, his rights depend upon the same law. It is provided by the first section of the act of April 16, 1816, (3 Stat., 286,) "that the officers and private soldiers of the militia, as aforesaid, who have been disabled by wounds, or otherwise, while in the service of the United States, in the discharge of their duty, during the late war, shall be placed on the list of pensioners, in the same manner as the officers and soldiers of the regular army, under such forms of evidence as the President of the United States may prescribe."

By the 14th section of the act of January 11, 1812, (2 Stat., 673,) it is enacted, "that if any officer, non-commissioned officer, musician, or private, shall be disabled by wounds, or otherwise, while in the line of his duty in public service, he shall be placed on the list of in-

valids of the United States, at such rate of pension and under such regulations as are or may be directed by law.

The 14th section of the act of March 16, 1802, (2 Stat., 135,) enacts "that if any officer, non-commissioned officer, musician or private, in the corps composing the peace establishment, shall be disabled by wounds or otherwise, while in the line of his duty, in public service, he shall be placed on the list of invalids of the United States at such rate of pay and under such regulations as may be directed by the President of the United States for the time being."

We have referred to the act of 1802, because the act of 1812 does not prescribe the manner in which the rate is to be fixed, nor the particular regulation under which the invalid should be placed on the roll of pensioners. The only act of Congress in force in 1812, to which the act of 1812 can be supposed to refer, is the act of 1802. As no subsequent law has provided different regulations, the act of 1802 must govern in all cases which arise under the act of 1812.—(See opinion of Attorney General Taney, 2 Op. Attorneys General, 519.)

On the 10th day of April, 1806, (2 Stat., 376,) an act was passed "to provide for persons who were disabled by known wounds received in the revolutionary war." The 4th section of this act provided "that every pension, or increase thereof by virtue of this act, shall commence on the day when the claimant shall have completed his testimony before the authority proper to take the same."

The act of May 15, 1820, (3 Stat., 596,) revives and continues in force the act of 1806 until the 15th of May, 1821. The 2d section of the act of 1820 provides "that the right any person now has or may hereafter acquire to receive a pension in virtue of any law of the United States, be considered to commence at the time of completing his testimony, pursuant to the act hereby revived and continued in force."

It thus appears that the provision relating to the time of the commencement of the pension contained in the act of 1806 was made applicable to all pensions, and that in all cases the pension was to commence at the time of completing the testimony. The same provision in relation to the time of the commencement of the pension is made by the 2d section of the act of February 4, 1822, (3 Stat., 650.) On the 11th December, 1822, the following letter was written to Mr. Calhoun, the Secretary of War, by Mr. Edwards, the Commissioner of Pensions:

"WAR DEPARTMENT,
"Pension Office, December 11, 1822.

"SIR: In answer to the inquiry as to what has been the practice in cases of invalid pensioners placed on the list by special acts of Congress, as to the time of commencing the pensions, I have to state that the pension has been made to commence (so far as I have been able to ascertain by a reference to the files) at the date of the last deposition made in support of the claim. The 4th section of the act of the 10th of April, 1806, requires the pension to commence on the day when the claimant shall have completed his testimony before the authority proper to take the same. The 2d section of the act of the 4th of Feb-

ruary last declares that the pension shall commence at the time of completing the testimony pursuant to the act thereby revived.

“J. L. EDWARDS.”

On this the Secretary made the following endorsement:

“WAR OFFICE, *December 11, 1822.*

“In pension applications hereafter the rule adopted by Congress within alluded to will be adhered to.

“J. C. CALHOUN.”

At the time the claimant applied for his pension, in the year 1852, there were two acts of Congress in force providing that invalid pensions should commence from the time of the completion of the proof. There was also a regulation of the War Department, which must be considered as the act of the President, to the same effect. We can, therefore, come to no other conclusion than that the petitioner, however equitable a claim he may have upon Congress, has no legal cause of action against the United States for the amount of his pension from the time when the disability was incurred until the year 1852.

It may be remarked that the opinion of Mr. Secretary Marcy, of August 28, 1846, to which the claimant refers in his brief, is not applicable to the present case. Mr. Marcy says, that where it is very obvious that the pensioner has suffered the amputation of a limb from a wound received in battle, and has, by reason of his helpless condition, arising from the loss of his limb, delayed his application, he should receive his *increased* pension from the time when the amputation took place; but in this case the application is not for an increase of pension, but for the arrears of the present pension prior to 1852; secondly, the wound was not received in battle; thirdly, the claimant has not delayed his application by reason of his helpless condition arising from the loss of his limb, for the claimant states as his reason for the delay that he knew nothing of his right to a pension until he removed to Kentucky, about three years before his application was made. The regulation then made by Mr. Marcy, however just and proper it may be in itself, has no application to the present claim.

We think the claimant has no cause of action.

